



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1991

Mr. Fred Toler
Executive Director
Texas Commission on Law Enforcement
Officer Standards and Education
1033 La Posada, Suite 240
Austin, Texas 78752

OR91-453

Dear Mr. Toler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13007.

You have received a request for copies of any and/or all documents contained in the (Texas Commission on Law Enforcement Officer Standards and Education) file of John M. Mylett. You maintain that Mr. Mylett has filed a petition to have certain documents contained in his file expunged, that you have forwarded a copy of the documents at issue to the office of the attorney general, and that the attorney general will oppose Mr. Mylett's petition for expunction. On the basis of your claim that the expunction proceedings are still pending, you claim protection from disclosure under sections 3(a)(3) and 3(a)(7) of the Open Records Act.

Section 3(a)(3) excepts from disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence

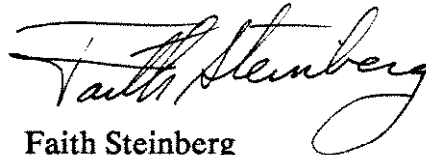
of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) enables a governmental entity to protect its position in litigation by requiring opposing parties to use the discovery process to obtain information relating to the litigation. Attorney General Opinion JM-1048 (1989); Open Records Decision Nos. 551 (1990); 454 (1986). The Open Records Act was not intended to provide parties to litigation earlier or greater access to information than was already available to them through existing procedures. Open Records Decision Nos. 551, 108 (1975).

We have determined that the proceedings for an expunction hearing regarding certain records in Mr. Mylett's TCLEOSE file are pending. Therefore, unless the requested information has already been disclosed through discovery or by court order, the requested information is excepted from public disclosure under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation at issue. Open Records Decision No. 551 at 40. Because we resolve your request under section 3(a)(3), we need not consider the applicability of section 3(a)(7) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-453.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Faith Steinberg".

Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/GK/lb

Mr. Fred Toler - Page 3 (OR91-453)

Ref.: ID# 13007

cc: Mr. John M. Mylett
504 Bellmar
Friendswood, Texas 77546